



Quinault Indian Nation

POST OFFICE BOX 189 □ TAHOLAH, WASHINGTON 98587 □ TELEPHONE (360)276-8211

February 1, 2000

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U.S. Environmental Protection Agency
Region 10
1200 Sixth Avenue
Seattle, Washington 98101

Attention : Dianna Boquist

Please find attached the Quinault Indian Nation's application documents for the FY 2000 Clean Water Act Section 106, Water Pollution Control and Groundwater Management Programs. Included in this package are the original signed Application for federal assistance documents; CWA section 106 Scope of Work; and, the Quinault Nation TAS application package.

The Nation is requesting \$60,00.00 to install a new stream gauge and improve water quality monitoring on the lower Quinault River, we will also hire a tribal member as our second water quality technician. These additions are important to expand the ongoing water quality program of the Quinault Indian Nation.

The Nation appreciates the consideration shown by your office in permitting us to submit this application. If you have any questions regarding this application, please contact Wilma Hudson, Grants & Contracts Officer at (360) 276-8215, extension 263 regarding financial or contract matters; or John Sims, Environmental Protection Division Manager, for technical questions relating to the scope of work.

Sincerely,

A handwritten signature in blue ink, which appears to read "Virginia Brings Yellow".

Virginia Brings Yellow, Treasurer
Quinault Indian Nation

**APPLICATION of the QUINAULT INDIAN NATION
for TREATMENT as a STATE PURSUANT to
33 U.S.C. §§1251 et seq. and THE WATER QUALITY ACT of 1987**

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Supporting Exhibits

- #1 104 Application - Business Committee Resolution
- #2 63 *Federal Register* 71941 (1998)
- #3 QIN Constitution and By Laws
- #4 QIN Organizational Chart
- #5 Reservation Map
- #6 Emergency Powers Resolution
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- #8 QIN Procurement Policy

QUINULT INDIAN NATION
P.O. Box 189, Taholah WA 98587

APPLICATION of the QUINULT INDIAN NATION
for TREATMENT as a STATE PURSUANT to
33 U.S.C. §§1251 et seq. and THE WATER QUALITY ACT of 1987
January 28, 2000

I. GENERAL ADMINISTRATIVE INFORMATION

- A. Applicant. The applicant is the Quinault Indian Nation (QIN).
- B. Applicant's Address. The mailing address of QIN is Box 189, Taholah, WA 98587.
- C. Applicant's Telephone Number. The telephone number for the QIN is (360) 276-8211. The fax number is (360) 276-4682
- D. Applicant's Representatives. Representatives of the QIN with regard to this application are as follows:
 - 1. Pearl Capoeman-Baller, President, Quinault Indian Nation, P.O. Box 189, Taholah, WA 98587
 - 2. David Martin, Vice President, Quinault Indian Nation, PO Box 189, Taholah, WA 98587.
 - 3. Fawn Sharp, Richard Reich and Eric Nielsen, Reservation Attorneys , PO Box 189, Taholah, WA 98587. Licensed to practice in the State of Washington
- E. This application was prepared on behalf of the QIN by John Sims, Manager, Environmental Protection Division, Department of Natural Resources, reviewed by the representatives listed above, and approved by the Quinault Business Committee.
- F. Purposes of Application. The QIN seeks treatment as a state pursuant to section 518 of the Clean Water Act, 33 U.S.C. Section 1251 et seq., as amended by the Water Quality Act of 1987 (P.L. 100-4, February 4, 1987). This application will support the submission by the QIN of its Grant Application for Funding under CWA §106, to Develop a Non-point Source Water Pollution Assessment and Management Plan, for EPA's review and approval.
- G. This application has been reviewed by the Quinault Indian Nation Business Committee, the governing body of the QIN, by Resolution 00-____-____, adopted on January 28, 2000, which Resolution is attached to this application as **Exhibit 1** and made a part hereof for all purposes.
- H. Date of Application. The date of this application is January 28, 2000.

II. FEDERAL RECOGNITION

The United States and the Quinault Indian Nation are parties to the Treaty of Olympia of 1855, (12 STAT. 97; II Kappler 719). Federal recognition of the Nation has continued to this day as evidenced by notice appearing in the Federal Register on December 30, 1998 (63 F.R. 71941). A copy of this notice is attached as **Exhibit 2**, attached hereto and made a part hereof for all purposes. The Reservation was created on July 1, 1855 and expanded in 1873. The Enabling Act under which Washington was admitted to statehood did not become law until February 22nd, 1889, and the State was not admitted to the Union until November 11, 1889 (*United States v. Moore*, 62 F. Supp. 660 at 663 (U.S. Dist. Ct.--W.D. Wash. 1945)). Thus, the Reservation predates the existence of the State of Washington as discussed below, this is a significant jurisdictional fact (see discussion at page 8, *infra*).

III. SUBSTANTIAL GOVERNMENTAL DUTIES AND POWERS.

A. Form of Government.

The QIN is an Indian Nation organized under a constitution adopted by the membership on March 22, 1975. The Quinault Business Committee is the duly constituted governing body of the QIN by the authority of Article V of the Constitution and Bylaws of the QIN. The QIN Constitution and Bylaws establish the Quinault Business Committee (QBC) as the governing body of the Nation and delegate to the QBC broad governmental powers. A copy of the Constitution and Bylaws is attached as **Exhibit 3** and made a part hereof for all purposes.

B. Authority of the Quinault Business Committee.

Under the Nation's Constitution, Article V, the QBC's authority includes the following:

1. To negotiate with the Federal, State, local governments or agencies, and other public or private organizations or persons on behalf of the QIN; provided, that these agreements are not in conflict with the Constitution, instructions of the General Council, or laws of the QIN;
2. To administer any funds in control of the QIN;
3. To employ legal counsel for the protection and advancement of the rights of the QIN and its members. To approve any acquisition, sale, disposition, lease or encumbrance of tribal assets
4. To provide for the zoning and other land use regulation of all lands within the boundaries of the Quinault Reservation and the jurisdiction of the QIN; and for the purity, volume, and use of all water to which the QIN and the Quinault people are entitled; and for the purity of the air within the Quinault Reservation;
5. To manage, lease permit, sell, or otherwise deal with tribally owned lands, tribally owned interests in lands, water rights, fishing stations, mineral rights, hunting grounds, fish and wildlife resources; or other tribally owned assets, and to purchase

or otherwise acquire lands or interest in lands within or without the Reservation, and to hold those lands in tribal or federal trust and to regulate allotted trust and non-trust lands within the Reservation boundaries insofar as such regulation is not prohibited by federal law and does not violate the rights of owners; provided, that tribally owned lands held in trust by the United States shall not be sold or encumbered unless authorized by the General Counsel

6. To engage in any business that will further the economic well being of QIN and of the members of the QIN, or undertake any program or projects designed for the economic advancement of the people of the Nation
7. To borrow money from the federal government or other sources, to direct the use of such funds for productive purposes, and to pledge or assign chattels or income due or to become due;
8. To levy and collect assessments upon members and of the QIN. To regulate all business activity within the Quinault Reservation boundaries and levy and collect taxes or license fees upon members and non-members doing business on the reservation, to the extent allowed by federal law to exclude from the territory of the Nation persons not legally entitled to reside thereon, or trespassers upon the reservation, under ordinances.
9. To provide for an escheat in order that real and personal property of members who die intestate and without heirs shall revert to the QIN;
10. To provide for the execution and enforcement of the laws of the QIN; and to establish an independent Tribal Court, and to provide by law for its jurisdiction, procedures and appointment or election of its judges; and to charter and regulate associations, schools, religious institutions, financial institutions and all other entities; and to establish National enterprises as branches of the Nation government;
11. To assert the defense of sovereign immunity in suites brought against the Nation and to waive the said defense by agreement where National realty or property not held in trust by the United States is pledged or when property held in trust by the United States is pledged or when property held in trust by the United States is pledged with the consent of the United States;
12. To manage, protect and preserve the natural resources of the QIN and to regulate hunting, fishing, including shellfishing, and trapping within the jurisdiction of the Nation;
13. To condemn land or interest in lands for public purposes within the boundaries of the Reservation; provided that owners of the lands shall be paid the fair market value of such lands and any timber or buildings thereon;
14. To enact all laws which shall be necessary and proper for carrying into execution any power delegated to the Business Committee or delegated to any person or committee under the supervision of the Business Committee;
15. To govern the inheritance of real and personal property owned by members;

16. To govern all people, resources, lands and waters under the jurisdiction of the QIN in accordance with the Quinault Constitution, the Quinault Tribal Code of Laws, the Quinault treaty, the laws of the United States expressly limiting the powers of the QIN, and the instructions of the General Council;
17. To enact laws for the welfare of the QIN; provided that such laws are not in conflict with the Quinault Constitution, and after public hearing.

The Bylaws assign particular duties to each officer of the Council

1. The President presides over the Quinault Business Committee and exercises all delegated authority. The President signs all official documents approved by the Business Committee or General Council. The President directs the implementation and enforcement of all laws passed by the Quinault Business Committee or General Council. The President represents the QIN in establishing, maintaining and furthering relationships with other governments.
2. The Vice-President assumes the duties of the President delegated by the President. The Vice-President Serves as Chief Executive Officer of the QIN in the absence of the president.
3. The Secretary keeps minutes and records of Council business at Business Committee and General Council meetings. Prepares agendas for all Business Committee and General Council meetings. Maintains custody of the tribal seal and is authorized to affix the seal to all official documents. Directs the publication of all notices required by law to be published.
4. The Treasurer accounts for all QIN funds and preserves records of such funds, makes reports in writing, and makes authorized disbursements. Oversees the financial affairs of the QIN and initiates audits.
5. Councilpersons make up the legislative body of the QIN.

C. Tribal Programs

1. The QIN has an extensive governmental organization and is currently administering numerous programs for the benefit of Tribal members and for residents of the Quinault Indian Reservation. A copy of the organizational chart for the QIN is attached as Exhibit 4, and made a part hereof for all purposes.
2. The Executive Director presides over the following departments: Natural Resources; Administration; Community Development; and Social, Health, and Education.
3. The principal Tribal department relative to this application is the Quinault Department of Natural Resources (QDNR). QDNR has approximately 72 employees operating programs in Indian Law as it relates to natural resources, Fisheries Harvest Management, Resource Management, Adult Assessment, and Marine Fisheries and Shellfish; Forestry Management; Environmental Protection; Timber/Fish/Wildlife; Air Quality; and Water Quality. A more complete discussion of this department is under "V. Tribal Capabilities," *infra*.

D. Tribal Law

Tribal law is established by resolutions, codes and ordinances enacted by the QBC. In addition to the Constitution and Bylaws, the following Ordinances and Resolutions are currently in effect:

Beach Lands Protection Code	Judicial Codes
Building Ordinance	Court Rules
Business Licensing and Tax Ordinance	Liquor Code
Conservation Code	Mortgage Foreclosure Code
Criminal Code	Motor Vehicle Code
Dangerous and Nuisance Buildings Code	Probate Code
Domestic Relations Code	Repossession Regulation
Domestic Violence Code	Sewer Code
Employment Preference Ordinance	Sovereign Immunity Ordinance
Eviction Ordinance	Tobacco Ordinance
Fishing Code and Regulations	Utilities Ordinance
Natural Resource Management Code and Regulations	Vessel Registration Regulation
Gaming Code	Zoning Ordinance
Guardianship Code	
Housing Authority Ordinance	
Hunting Code and Regulations	
Indian Child Welfare/Dependency And Juvenile Offender Code	
Involuntary Commitment Code	

The QBC has adopted a tribal Personnel Policies and Procedures Manual to govern the rights of tribal employees and to explain operating procedures

The QBC has enacted numerous other resolutions not mentioned here but which currently govern and further delineate reservation activities.

E. The Tribal Court.

1. Quinault Tribal Court was established by Title 5 of the Quinault Tribal Code and interprets and enforces the Tribal Ordinances, laws, regulations and the Constitution. While the State of Washington exercises criminal and limited civil regulatory jurisdiction over non-Indians on the Reservation, the Tribal Court exercises criminal jurisdiction over all Indians within the Quinault Indian Reservation and has concurrent jurisdiction with the federal government for major crimes. The Court also has civil jurisdiction over non-Indians for activities on the Reservation that violate Tribal civil ordinances and regulations effecting the political integrity, the economic security, health, safety and welfare of QIN. United States vs. Montana, 450 U.S. 544 (1981); Cardin v. De La Cruz, 671 F.2d 363 (9th Cir.) Cert. Denied 459 U.S. 967, (1982). Approximately 78% of the Quinault Reservation lands are owed by the QIN or by Indians and most of that land is trust property. (See additional discussion under IV.C., *infra*.) The Tribal Court's criminal and civil authority over Reservation affairs--both adjudicatory and regulatory--is set forth in the several ordinances and codes mentioned above.

2. The Quinault Tribal Court is staffed by a Chief Judge and Associate Judge both of whom are Native Americans. There are three tribal attorneys who are members of the Washington Bar and a prosecutor and public defender who are also members of the Washington bar. There is a Clerk of the court and staff assistants. This Court has the power to enjoin activities on the Reservation that impair water and air quality and that threaten the Reservation's natural resources and wildlife.

F. Law Enforcement Services

Currently, the Quinault Tribal Police Department is under the supervision of a Chief of Police and is comprised of seven patrol officers, four fisheries enforcement officers, two forestry trespass officers, one game warden, four corrections officers (not commissioned), and one corrections/animal control officer (not commissioned), and staff. Each police officer in the QIN Tribal Police Department has been certified by the Washington State Criminal Justice Training Commission. The Tribal Police Department is operated by the QIN under a Self-Governance Compact (BIA Contract No. GTP06T11701) with the Bureau of Indian Affairs. 25 USC Sec. 450(f).

The fisheries, forestry, and game officers enforce the Tribal Fishing and Wildlife Codes.

G. Emergency Response

In addition to the QIN law enforcement officers in the Police Department, the Nation also has a Fire Department charged with responding to fires and to hazardous materials events. The Fire Chief is part of the Hazmat Team, along with Utilities personnel.

H. Cooperative Management

The Nation, as a member of their Sanctuary Advisory Group, is consulting with the Olympic Coast National Marine Sanctuary (NOAA) to address areas of mutual concern, such as potential oil spills, and scientific investigations along the Reservation's coastal boundary. The Nation is a member of the Sanctuary Advisory Council. The Nation conducts several off-Reservation programs with Washington State Department of Natural Resources (DNR), WDFW, and with timber landowners, such as Rayonier Timberlands, Simpson, and Weyerhaeuser Timber Companies; e.g., restoration of blocked fish passages, watershed analysis, Habitat Conservation Plans, and Landowner Landscape Plans. It works with Washington's Department of Ecology on developing tribal input to the State CWA §303(d) list of impaired water bodies. The Nation is currently developing its own program for water quality.

IV. LAND AND WATER RESOURCES OVER WHICH THE QUINULT INDIAN NATION ASSERTS REGULATORY JURISDICTION

This section of the application of the Quinault Indian Nation to the Environmental Protection Agency for treatment as a state under the Clean Water Act, as amended, has been reviewed by:

Eric Nielsen, Reservation Attorney
P.O. Box 189
Taholah, Washington 98587

I hereby certify that the legal analysis of the matters contained herein are accurate to the best of my knowledge. Further, the assertions as to the regulatory jurisdiction of the Quinault Indian Nation with regard to land and water resources described below are supported by the legal authorities cited herein and as such, meet the requirements of 33 U.S.C. § 518 (e) (2).


Eric Nielsen, Reservation Attorney

1-24-2000
Date

The management and protection of all tribal resources is a primary concern of the QIN. The Nation's authority to regulate its own natural resources is firmly established as a matter of federal and tribal law, as discussed below under Regulatory Jurisdiction in IV.C. Therefore, it is important to clearly set out the land base and water resources of the Nation.

A. Tribal Land Base.

The Quinault Indian Reservation was originally set aside by the Treaty of Olympia of 1855, (12 STAT. 97; II Kappler 719). The size of the reservation is 207,000 acres. It is located on the Pacific Coast of the Olympic Peninsula in Jefferson and Grays Harbor Counties, Washington. It includes the lowest portion of the Queets River and a major part of one of its tributaries, the Salmon River; Lake Quinault and the Quinault River from the Lake to the Pacific Ocean; Raft River; portions of the Moclips River; numerous small coastal streams (e.g., Whale Creek, Wreck Creek, etc.); and wetlands. A map of the Quinault Indian Reservation is attached as Exhibit 5, and made a part hereof for all purposes.

B. Tribal Water Rights

1. Reservation Water Bodies. The Quinault River flows through the Reservation, and is a major source of economic and cultural well being for the Quinault People. This river has viable stocks of wild salmon and trout. The Quinault River's ground water provides drinking water for Taholah, and the Queets River Basin's ground water provides drinking water for the village of Queets. Lake Quinault and Salmon River supply water for the QIN two hatcheries, plus a Penned Rearing facility at the Lake. The estuaries of these rivers are home to outmigrating smolt, returning adult anadromous fish, and several other species of fish and shellfish, as is the Pacific Coast and offshore waters. It is recognized that Washington tribes enjoy first and earliest priority to all of the waters that arise on, border, traverse, underlie or are encompassed with the reservation as well as "Winters" rights (see #3, *infra*).
2. As tribal reserved water rights are based on federal law, they are not subject to state regulatory jurisdiction. (See also Moore v. United States, *supra*.) These rights can be

exercised by the Nation through its authority without any state permit or other form of authorization issued by a state or its subdivision.

3. 25 U.S.C. §415(a) provides for the lease of tribal and allotted Indian lands for business and other purposes and specifically authorizes leases to develop or utilize natural resources in connection with operations under these leases. These facts alone demonstrate the Tribe's overriding interest in regulation the waters within its exterior boundaries.
4. The Reservation also includes large wetlands and creeks. (See Reservation Map Exhibit 5.)
5. The Tribe's water rights are also founded on the Winters doctrine, named after the landmark decision in the United States Supreme Court: Winters v. United States, 207 U.S. 564 (1908). In Winters, a Montana tribe sought to restrain the United States from building a dam on the Milk River, as it would reduce the availability of water for irrigation of Reservation lands. The dam would be off-Reservation. The Court held that the establishment of an Indian reservation carries with it the right of sufficient water to fulfill the reservation's purposes. Progeny of this case have extended it to include the right to instream flows to satisfy the Tribe's treaty fishing rights. See, e.g., United States v. Adair, 478 F. Supp. 336, 345 (D. Or. 1979); aff'd 723 F.2d 1394 (9th Cir. 1984) cert. den. sub nom.; Oregon v. United States, 467 U.S. 1252 (1984); Colville Confederated Tribes v. Walton, 460 F. Supp. 1320, 1330 (E.D. Wash. 1978), aff'd, 647 F.2d 42 (9th Cir. 1980), cert. den., 454 U.S. 1092 (1981); enforced, Colville Confederated Tribes v. Walton, 752 F.2d 397 (9th Cir. 1984); Kittitas Reclamation District v. Sunnyside Valley Irrigation District, 763 F.2d 1032 (9th Cir. 1985), cert. den., 474 U.S. 1032 (1985); Muckelshoot Indian Tribe v. Trans-Canada Enterprises, Ltd., 713 F.2d 455 (9th Cir. 1983), cert. den., 465 U.S. 1049 (1984); Joint Board of Control of the Flathead, Mission & Jocko Irrigation District of United States, 832 F.2d 1127 (9th Cir. 1987).
6. The authority of tribes to regulate the use of the Winters waters is well established. Colville Confederated Tribe v. Walton, 647 F.2d 42 (9th Cir. 1981), cert. den., 454 U.S. 1092 (1981); United States v. Anderson, 763 F.2d 1358 (9th Cir. 1984). Winters rights have priority dating to the time the treaties were signed (July 1, 1855, for the Quinault). Treaty-reserved rights to fish may also carry an implied right to water necessary to protect the fishery resource. Unlike Winters rights, implied rights to the water necessary to protect the fishery resource have a priority date of time immemorial. United States v. Adair, 723 F.2d 1394 (U.S. Ct. App. 9th Cir. 1983).
7. To date, the Winters rights of the Nation have not been quantified. The State of Washington recognizes tribal reserved rights and that they have not yet been quantified.
8. The Quinault Indian Nation's treaty rights to fish, provide adequate water for their habitat (protection from environmental degradation) and to regulate its fishery without involvement by the State, have been judicially recognized in United States v. Washington, 384 F.Supp. 312 (U.S. Dist. Ct.--W. D. Wash. 1974); aff'd, 520 F.2d 676 (U.S. Ct. App.--9th Cir. 1975), cert. den. 423 U.S. 1086, 96 S.Ct. 877, 47 L.Ed. 2d 97 (1976), and in its more recent progeny; e.g., United States v. Washington-- Phase II, 506 F.Supp. 187 (U.S. Dist. Ct., W. Dist. Wash.--1980).
9. The QIN is in the process of developing Water Quality Standards that will support water quality regulations. The promulgation of these regulations will involve input from

several departments, primarily Natural Resources, but also Social, Health, and Education, and Community Development. A first draft of the Standards should be ready for review and comment by the department heads and tribal attorneys during the coming fiscal year. The draft Standards would then be submitted for public comment, in the next twelve months.

C. Regulatory Jurisdiction

1. Under federal law, the jurisdiction of the Quinault Tribal Court extends to the activity of Tribal members and non-Indians within the Reservation boundaries. Indian tribes retain “attributes of sovereignty over both their members and their territory...” United States v. Mazurie, 419 U.S. 544, 577 (1975). While the federal courts have in some cases found divestiture of a tribe’s jurisdiction over non-Indian activity within reservation boundaries, none of these limitations significantly affect the authority of the QIN on the Quinault Indian Reservation.
2. The limitations on Tribal civil jurisdiction over non-Indians have generally focused on non-Indian activity on fee lands owned by non-Indians. Even those activities, however, should not limit the Nation's authority to regulate water quality. In United States vs. Montana, 450 U.S. 544 (1981), the Supreme Court held (at 566) that a tribe retains civil jurisdiction over parties that have “consensual relations with the tribe” or where there is a showing that the “conduct threatens or has some direct effect on the political integrity, the economic security, or the health and welfare of the tribe.” Regulation of water quality of streams or other water bodies within the Quinault Indian Reservation, especially those waters the Nation owns, like Lake Quinault, or where the Nation possesses exclusive fishing rights, like the Quinault, Queets, Raft and Salmon Rivers, would certainly come within this standard, as explained below.
3. The most important bodies of water on the reservation are the Quinault River, Queets River, Raft River, Moclips River, Lake Quinault, and numerous coastal streams connecting directly with the Pacific Ocean. The Nation depends on its fisheries for subsistence and commerce. Anadromous fish enter by way of these rivers and their estuaries.
4. It has been established that the Nation has exclusive jurisdiction over the waters and the bed of the Quinault River and Lake Quinault, and other waters flowing within the external boundaries of the Reservation, and of the ocean tide lands, where they border the Reservation. Washington State Attorney General’s Opinion, at 783, 787-788, (1927-1928) (Quinault Indian Nation has jurisdiction over the navigable waters and beds on the Quinault Indian Reservation). The Nation’s exclusive on-Reservation fishing rights can be impaired by pollutants entering the Reservation’s river and lake systems; activities affecting water quality occur on fee lands within the Reservation boundary—activities that can affect tribal economics, health and welfare, so the Nation would logically have authority to regulate such activities, insofar as they impact water quality. See, Snow v. Quinault Indian Nation, 709 F.2d 1319, (9th Cir. 1983) (Quinault Tribe has authority to tax non-Indian businesses located on Quinault Reservation); Cardin v. De La Cruz, 671 F.2d 363 (9th Cir.) Cert. Denied 459 U.S. 967, 103 S.Ct. 293, 74 L.Ed.2d 277 (1982) (Quinault Tribe’s health, safety and building codes apply to non-Indian fee landowner).
5. The Supreme Court’s decision in Brendale v. Confederated Tribes and Bands of the Yakima Indian Nation, et al., 492 U.S. 408 (1989) is not dispositive of the authority or

jurisdiction of the Tribal Court in any manner relevant to this application. Brendale was a zoning case regarding the rights of the Yakama Indian Nation to exercise zoning authority over fee land. Justice White's opinion, which took the narrowest view of tribal authority, expressly distinguished the Brendale circumstances from those situations where Congress has expressly delegated regulatory authority to a tribe, as in the Clean Water Act. The Quinault Tribal Court, even after Brendale, has jurisdiction over non-Indian activity on fee lands allegedly in violation of delegated programs under the Clean Water Act, because tribes have been authorized to exercise such authority by Congress under this Act.

6. As noted in the previous section of this application, the QIN Tribal Court is empowered under tribal law to enjoin activities on the Reservation that impair water and air quality that threaten the Reservation's natural resources and wildlife. In addition, to meet the EPA requirement regarding tribal enforcement mechanisms to stop pollution sources that present an imminent and substantial endangerment to human health or welfare, The Business Committee has adopted a resolution authorizing the President of the Nation to file an action in Tribal Court to halt the discharge of pollutants. (See **Exhibit 6**, attached)

V. TRIBAL CAPABILITY

A. Tribal Experience in Administration of Water Quality Projects

The QIN is fully capable of functioning in a way consistent with Clean Water Act provisions and the regulations promulgated thereunder. It has considerable experience in performing water quality activities under grants and contracts with federal and state agencies, including five years of water quality baseline monitoring of treaty-land fresh waters (USEPA funding), groundwater protection grants funded by the BIA and the Washington Department of Ecology, and a Wetlands Grant with the EPA. These grants will be useful in the future, when the Nation develops regulations and guidelines for protection of Reservation waters. Other grants with BIA pertain to stream restoration and watershed analysis. A watershed analysis was completed for the Quinault River Basin and a second one is under way on the Salmon River watershed. The Quinault Watershed Analysis identifies pollutants (including temperature, D.O., and sediments) that impact salmonid habitat. Other water quality monitoring indicates similar problems in most waters of the Reservation. Watershed analyses as well as monitoring are leading to recommendations under Federal Guidelines for implementing Best Management Practices in the forestlands of the Reservation. The Nation is currently drafting an Environmental Assessment for a ten-year Forest Management Plan on the Quinault Reservation. This Environmental Assessment and Forest Management Plan will incorporate the science-based recommendations referred to above.

B. Capability of Taking on CWA §106 Responsibilities

The prior and ongoing grants and staffing regarding water quality issues form a solid basis for the Nation's development of an Environmental Assessment and Management Plan (for eligibility for §319 funding), which will be the subject of a CWA §106 funding application. The person assigned to head up this task will be our Environmental Protection Manager, who is an aquatic biologist and former Water Resources manager. He has worked in the environmental arena for tribal environmental programs for eight and one half years on technical projects, and has formulated recommendations for Tribal policy persons during that period. His work plan does not include the specific development of an Environmental Assessment and Management Plan for Section 106 funding. He contributes services out of the QIN-BIA Self-Governance Compact funds. EPA funds for 106 would be used for equipment, supplies, GIS services, and stream gaging recording and reporting contracts.

The extensive work involved in canvassing data and integrating it to develop an Environmental Assessment and Management Plan will require some staffing and some software purchases (e.g., Rockware to integrate well data). Maps will need to be purchased, as well. We anticipate the need for part-time technical support to gather data from various sources (tribal, state, and federal) and to enter this into computer programs. Some GIS services and other software may also be required. The QIN currently has comprehensive GIS capability, with two full-time, permanent staff members dedicated to this service. Assumption of Section 106 responsibilities will support the goal of clearly delineating non-point pollution sources and to evolve a plan for reducing and/or removing such sources.

C. Financial and Administrative Capabilities

The QIN's administrative and financial capability to handle federal grants and contacts is sufficient to manage EPA funds under the Clean Water Act. The Tribe's accounting and

procurement systems meet federal grant requirements, as set forth in previous EPA applications for Region 10 See copy of the most recent audit report attached as **Exhibit 7**. The Tribe currently has four EPA grants: GAP, Air Quality, Watershed Analysis and Management, and Wetlands Protection.

The day-to-day operations of the QIN are conducted by the Tribal Operations Director, under the supervision of the Executive Director, Pearl Capoeiman-Baller. The Nation's Grants and Contracts Officer is Wilma Hudson, and its Chief Financial Officer is Lynda Jolly. The finances are audited annually by the firm of Moss-Adams of Bellingham, Washington. These annual audits have demonstrated the financial and administrative capability of the Tribe to comply with and manage the grants and contracts that the QIN receives from various agencies. A summary of the Tribe's Procurement Procedures is attached as **Exhibit 8**.

Qualification of Key Staff:

The Department of Natural Resources will implement EPA grants regarding treatment as a state. Its Director is Bruce Jones. Mr. Jones heads a department with three divisions combining expertise in several scientific disciplines including Forestry, Fisheries, water resources, hydrology, wildlife management, Timber/Fish and Wildlife, and an Air Quality program. Other key staff that will be charged with responsibilities under QIN section 106 program operations include:

Environmental Protection Division Manager: BS in Fisheries; MS in Biology; four years as Water Resources Manager; two and one half years as EP Division Manager, supervising forest practices regulation and enforcement, water quality, air quality, wildlife and ESA programs, including bald eagles, bull trout, Northern Spotted Owl and marbled murrelet.

Senior Biologist: BS in Fisheries; twelve years as a fish habitat biologist with the QIN; participant in the Forestry Module and Forests and Fish (WA State) negotiations. Supervises all technical managers in the EP Division.

Water Resources Section Manager: Ph.D. in Civil Engineering/Water Resources; two and one half years as Water Resources Manager.

Water Quality Technician: One and one half years as Water Quality Technician; graduate of BIA six-week school for tribal water quality technicians.

GIS Staff: the Principle GIS Analyst for the Nation has worked for the QDNR Forestry Division since 1997. He holds a Bachelor of Science in Biology from the University of Illinois (1982) and a Certificate in Geo-Information Systems from Green River Community College (1996) He has provided services as the lead GIS analyst for the QIN Salmon River water project. He also provided GIS services to the Puyallup Tribe and to the Swedish Medical Center in Seattle while completing his studies at Green River in 1992.

VI. REQUEST FOR APPROVAL

Based upon the foregoing, the QIN respectfully requests that the Environmental Protection Agency approve this application for treatment as a state pursuant to Section 518 of the Clean Water Act, 33 U.S.C. § 1377, as amended by the Water Quality Act of 1987 (P.L. 100-4, February 4, 1987).

Respectfully submitted,

A handwritten signature in cursive script that reads "Pearl Capoeman-Baller".

Pearl Capoeman-Baller
President